IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10780 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANCHALBEN SUPADBHAI VASAVA

Versus

THE STATE OF GUJARAT THRO' THE DY. SECRETARY

Appearance:

1. Special Civil Application No. 10780 of 2004

MR CHETAN K PANDYA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/11/2004

ORAL JUDGEMENT

1. By this petition under Article 226 read with

Article 21 of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 07.04.2004 passed by the District Magistrate, Surat in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA ACt.

2. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in three different offences punishable under Sections 66B, 65AE, 81,116B of the Bombay Prohibition Act. It is recorded by the authority that the petitioner is a "boot-legger" and is involved in the activities dangerous to the society. Of course, no formal statements of the witnesses claiming privilege have been recorded in the present case.

3. The petitioner is a lady and she has challenged the legality and validity of the order of detention on number of grounds. However, the ld. counsel Mr. Chetan Pandya for the petitioner, has mainly focussed his arguments on one ground and has submitted that alleged activities of the petitioner mentioned in the grounds of detention cannot be said to be activities affecting the public order. So, the District Magistrate, Surat has no scope to exercise jurisdiction or powers vested in him under Section 3(2) of the PASA Act.

4. The subjective satisfaction recorded by the authority says that the activities of the petitioner affect the "public order" is neither legal nor logical. At the most, it can be said that the activities fall under the category which can be said to be adverse to the law & order situation in the society. It is submitted that in one of the offences, name of the petitioner was not disclosed at all and he has been falsely implicated. Mr. Pandya has taken this Court through the grounds of detention and relevant record available and has submitted that in the case of similar set of facts, this Court (Coram: A.L. Dave, J) while dealing with the Spl.C.A. No. 143 of 2002 in the case of Babuji Jakshi Thakore v/s State of Gujarat, decided on 14.2.2002, has held that the activities of the person concerned concerning with the offences punishable under the provisions of the Bombay Prohibition Act, cannot be said to be the activities affecting the "public order" in absence of any other relevant and cogent set of facts and such set of facts

credible material. In the case of Babuji Jakshi Thakore (supra), this Court has observed that the only material wherein also there is nothing to indicate any disturbance to the "public order". So, mere registration of criminal offences punishable under the Bombay Prohibition Act should not give rise to any cause for detaining authority to pass such order affecting adversely to the personal liberty.

6. Ld. counsel Mr. Pandya for the petitioner has rightly submitted that this Court has considered the ratio of the very decision of the Apex Court viz. Kanuji Zala (supra) while dealing with LPA No. 223/2000 in Spl.C.A. No. 554/2000 decided on 22.8.2000 in the case of Ashok Balabhai Makwana. In para-5 of the said decision, it has been observed that the Apex Court in the decision of Kanuji Zala (supra) has said that what is required to be considered in such cases is whether there as credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of the "public order" as defined in the PASA Act. The contention is that the touch-stone in such cases is the presence of credible material before the detaining authority.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 07.04.2004 passed by the District Magistrate, Surat is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.
Direct Service is permitted.

[C. K.BUCH, J]
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